

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79149213
LAW OFFICE ASSIGNED	LAW OFFICE 110
MARK SECTION	
MARK FILE NAME	http://tmng-al.uspto.gov/resting2/api/img/79149213/large
LITERAL ELEMENT	TETRA
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
COLOR(S) CLAIMED (If applicable)	Color is not claimed as a feature of the mark.
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the term "TETRA" to the left of a water flea inside of a shaded circle.
ARGUMENT(S)	
Please see the actual argument text attached within the Evidence section.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_12141226-20150911183152574408 . TETRA - Response to Final Office Action.pdf
CONVERTED PDF FILE(S) (7 pages)	\\TICRS\EXPORT16\IMAGEOUT16\791\492\79149213\xml10\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\492\79149213\xml10\RFR0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\492\79149213\xml10\RFR0004.JPG
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	\\TICRS\EXPORT16\IMAGEOUT16\791\492\79149213\xml10\RFR0006.JPG

	\\TICRS\EXPORT16\IMAGEOUT16\791\492\79149213\xml10\RFR0007.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\492\79149213\xml10\RFR0008.JPG
ORIGINAL PDF FILE	evi_12141226-20150911183152574408_.TETRA_-_Exhibit_A.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT16\IMAGEOUT16\791\492\79149213\xml10\RFR0009.JPG
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ORIGINAL PDF FILE	evi_12141226-20150911183152574408_.TETRA_-_Exhibit_B.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT16\IMAGEOUT16\791\492\79149213\xml10\RFR0012.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\492\79149213\xml10\RFR0013.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\492\79149213\xml10\RFR0014.JPG
ORIGINAL PDF FILE	evi_12141226-20150911183152574408_.TETRA_-_Exhibit_C.pdf
CONVERTED PDF FILE(S) (5 pages)	\\TICRS\EXPORT16\IMAGEOUT16\791\492\79149213\xml10\RFR0015.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\492\79149213\xml10\RFR0016.JPG
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	\\TICRS\EXPORT16\IMAGEOUT16\791\492\79149213\xml10\RFR0019.JPG
DESCRIPTION OF EVIDENCE FILE	substantive argument and Exhibits A, B and C
GOODS AND/OR SERVICES SECTION (001)(current)	
INTERNATIONAL CLASS	001
DESCRIPTION	
Fertilizers for aquatic plants for use in indoor aquaria, terraria and garden ponds; fertilizers for ornamental plants; water conditioners for use in indoor aquaria and garden ponds; chemical test kits for testing ammonia, nitrite, nitrate, pH alkalinity, hardness and/or calcium in water; water softeners and decalcifiers for use in indoor aquaria, terraria and garden ponds; bacteria and preparations containing bacteria for use in water treatment; test strips for testing water in indoor aquaria, garden ponds and terraria	
GOODS AND/OR SERVICES SECTION (001)(proposed)	

INTERNATIONAL CLASS	001
TRACKED TEXT DESCRIPTION	
Fertilizers for aquatic plants for use in indoor aquaria, terraria and garden ponds; fertilizers for ornamental plants; water conditioners for use in indoor aquaria and garden ponds; chemical test kits for testing ammonia, nitrite, nitrate, pH alkalinity, hardness and/or calcium in water; chemical test kits for testing ammonia, nitrite, nitrate, pH alkalinity, hardness and/or calcium in water for non-medical and non-veterinary use ; water softeners and decalcifiers for use in indoor aquaria, terraria and garden ponds; bacteria and preparations containing bacteria for use in water treatment; bacteria and preparations containing bacteria for use in water treatment for non-medical and non-veterinary use ; test strips for testing water in indoor aquaria, garden ponds and terraria	
FINAL DESCRIPTION	
Fertilizers for aquatic plants for use in indoor aquaria, terraria and garden ponds; fertilizers for ornamental plants; water conditioners for use in indoor aquaria and garden ponds; chemical test kits for testing ammonia, nitrite, nitrate, pH alkalinity, hardness and/or calcium in water for non-medical and non-veterinary use; water softeners and decalcifiers for use in indoor aquaria, terraria and garden ponds; bacteria and preparations containing bacteria for use in water treatment for non-medical and non-veterinary use; test strips for testing water in indoor aquaria, garden ponds and terraria	
GOODS AND/OR SERVICES SECTION (007)(current)	
INTERNATIONAL CLASS	007
DESCRIPTION	
Electric membrane pumps for use in indoor aquaria; air pumps and water pumps for use in indoor aquaria, terraria and garden ponds; water aeration systems comprising water pumps and air compressors for use in indoor aquaria, terraria and garden ponds; draining apparatus (pumps) for use in garden ponds	
GOODS AND/OR SERVICES SECTION (007)(proposed)	
INTERNATIONAL CLASS	007
TRACKED TEXT DESCRIPTION	
Electric membrane pumps for use in indoor aquaria; air pumps and water pumps for use in indoor aquaria, terraria and garden ponds; electric air pumps and water pumps for use in indoor aquaria, terraria and garden ponds ; water aeration systems comprising water pumps and air compressors for use in indoor aquaria, terraria and garden ponds; draining apparatus (pumps) for use in garden ponds; draining apparatus, namely, electric pumps for use in garden ponds	
FINAL DESCRIPTION	
Electric membrane pumps for use in indoor aquaria; electric air pumps and water pumps for use in indoor aquaria, terraria and garden ponds; water aeration systems comprising water pumps and air compressors for use in indoor aquaria, terraria and garden ponds; draining apparatus, namely, electric pumps for use in garden ponds	
GOODS AND/OR SERVICES SECTION (009)(no change)	
GOODS AND/OR SERVICES SECTION (011)(current)	

INTERNATIONAL CLASS	011
DESCRIPTION	
<p>Lighting, heating and aerating apparatus; automatic temperature regulators; air filters, water filters all aforementioned goods to be used in indoor aquaria, terraria and garden ponds; heating apparatus with integrated thermostats for use in indoor aquaria and terraria; electrical filters and systems composed thereof for use in indoor aquaria, terraria and garden ponds; UV light bulbs for use in indoor aquaria, terraria and garden ponds; string lights for use in garden ponds; water filter and systems composed thereof for use in indoor aquaria, garden ponds and terraria; fountain filtration sets; filter pads for use in filters in indoor aquaria, terraria and garden ponds; artificial waterfalls and fountains</p>	
GOODS AND/OR SERVICES SECTION (011)(proposed)	
INTERNATIONAL CLASS	011
TRACKED TEXT DESCRIPTION	
<p>Lighting, heating and aerating apparatus; <u>Lighting, heating and aerating apparatus to be used in indoor aquaria, terraria and garden ponds, namely, aquarium lights, terrarium lights and lights to be used in garden ponds, water heaters to be used in indoor aquaria, terraria and garden ponds, electric heaters to be used in terraria, water treatment units for aerating and circulating water in indoor aquaria, terraria and garden ponds;</u> automatic temperature regulators; <u>automatic temperature regulators to be used in indoor aquaria, terraria and garden ponds;</u> air filters, water filters all aforementioned goods to be used in indoor aquaria, terraria and garden ponds; <u>air filters, water filters to be used in indoor aquaria, terraria and garden ponds;</u> heating apparatus with integrated thermostats for use in indoor aquaria and terraria; <u>heating apparatus with integrated thermostats for use in indoor aquaria and terraria, namely, water heaters and thermostats to be used in indoor aquaria, terraria and garden ponds, electric heaters to be used in terraria;</u> electrical filters and systems composed thereof for use in indoor aquaria, terraria and garden ponds; <u>electrical water filters and systems composed thereof and of filters, filter cartridges, filter pads and water pumps for use in indoor aquaria, terraria and garden ponds;</u> UV light bulbs for use in indoor aquaria, terraria and garden ponds; string lights for use in garden ponds; water filter and systems composed thereof for use in indoor aquaria, garden ponds and terraria; <u>water filter and systems composed thereof and of filters, filter cartridges, filter pads and water pumps for use in indoor aquaria, garden ponds and terraria;</u> fountain filtration sets; <u>fountain filtration sets comprised of filters, filter cartridges, water pumps and fountains;</u> filter pads for use in filters in indoor aquaria, terraria and garden ponds; <u>filter pads in the nature of replacement pads for water filters for use in water filters in indoor aquaria, terraria and garden ponds;</u> artificial waterfalls and fountains</p>	
FINAL DESCRIPTION	
<p>Lighting, heating and aerating apparatus to be used in indoor aquaria, terraria and garden ponds, namely, aquarium lights, terrarium lights and lights to be used in garden ponds, water heaters to be used in indoor aquaria, terraria and garden ponds, electric heaters to be used in terraria, water treatment units for aerating and circulating water in indoor aquaria, terraria and garden ponds; automatic temperature regulators to be used in indoor aquaria, terraria and garden ponds; air filters, water filters to be used in indoor aquaria, terraria and garden ponds; heating apparatus with integrated thermostats for use in indoor aquaria and terraria, namely, water heaters and thermostats to be used in indoor aquaria, terraria and garden ponds, electric heaters to be used in terraria; electrical water filters and systems composed thereof and of filters, filter cartridges, filter pads and water pumps for use in indoor aquaria, terraria and</p>	

garden ponds; UV light bulbs for use in indoor aquaria, terraria and garden ponds; string lights for use in garden ponds; water filter and systems composed thereof and of filters, filter cartridges, filter pads and water pumps for use in indoor aquaria, garden ponds and terraria; fountain filtration sets comprised of filters, filter cartridges, water pumps and fountains; filter pads in the nature of replacement pads for water filters for use in water filters in indoor aquaria, terraria and garden ponds; artificial waterfalls and fountains

GOODS AND/OR SERVICES SECTION (017)(no change)

GOODS AND/OR SERVICES SECTION (021)(current)

INTERNATIONAL CLASS	021
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DESCRIPTION

Planting baskets for use in garden ponds; decoration material for use in indoor aquaria, terraria and garden ponds; indoor aquarium bowls; aquaria and tanks for fish keeping; artificial reefs to be used as decorative material in indoor aquaria

GOODS AND/OR SERVICES SECTION (021)(proposed)

INTERNATIONAL CLASS	021
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TRACKED TEXT DESCRIPTION

Planting baskets for use in garden ponds; ~~decoration material for use in indoor aquaria, terraria and garden ponds;~~ decoration material, namely, artificial landscapes, artificial plants and flowers, water lilies, ornaments, for use in indoor aquaria, terraria and garden ponds; decoration material, namely, basking platforms for use in terraria; indoor aquarium bowls; aquaria and tanks for fish keeping; artificial reefs to be used as decorative material in indoor aquaria

FINAL DESCRIPTION

Planting baskets for use in garden ponds; decoration material, namely, artificial landscapes, artificial plants and flowers, water lilies, ornaments, for use in indoor aquaria, terraria and garden ponds; decoration material, namely, basking platforms for use in terraria; indoor aquarium bowls; aquaria and tanks for fish keeping; artificial reefs to be used as decorative material in indoor aquaria

GOODS AND/OR SERVICES SECTION (022)(no change)

ADDITIONAL STATEMENTS SECTION

SECTION 2(f) Claim of Acquired Distinctiveness, IN PART, based on Active Prior Registration(s)	TETRA has become distinctive of the goods/services as evidenced by the ownership on the Principal Register for the same mark for sufficiently similar goods/services of active U.S. Registration No(s). 1538717, 3098398, 3127194 and 4065205
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SECTION 2(f) Claim of Acquired Distinctiveness, IN PART, based on Five or More Years' Use	T has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use of the mark in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.
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NEW ATTORNEY SECTION

NAME	William H. Brewster
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FIRM NAME	Kilpatrick Townsend & Stockton LLP
INDIVIDUAL ATTORNEY DOCKET/REFERENCE NUMBER	056476.0957518
OTHER APPOINTED ATTORNEY	Michael W. Rafter, Jaclyn T. Shanks, Dana Breitman, Lisa M. Willis and other attorneys of the law firm
STREET	1100 Peachtree Street, Suite 2800
CITY	Atlanta
STATE	Georgia
ZIP/POSTAL CODE	30309-4528
COUNTRY	United States
PHONE	404-815-6500
FAX	404-815-6555
EMAIL	tadmin@kilpatricktownsend.com
AUTHORIZED EMAIL COMMUNICATION	Yes
CORRESPONDENCE SECTION	
ORIGINAL ADDRESS	Friedrich Graf von Westphalen & Partner Kaiser-Joseph-Straße 284 79098 Freiburg DE
NEW CORRESPONDENCE SECTION	
NAME	William H. Brewster
FIRM NAME	Kilpatrick Townsend & Stockton LLP
DOCKET/REFERENCE NUMBER	056476.0957518
STREET	1100 Peachtree Street, Suite 2800
CITY	Atlanta
STATE	Georgia
ZIP/POSTAL CODE	30309-4528
COUNTRY	United States
PHONE	404-815-6500
FAX	404-815-6555

EMAIL	tadmin@kilpatricktownsend.com;mrafter@kilpatricktownsend.com; jshanks@kilpatricktownsend.com; dbreitman@kilpatricktownsend.com; lwillis@kilpatricktownsend.com
AUTHORIZED EMAIL COMMUNICATION	Yes
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Lisa M. Willis/
SIGNATORY'S NAME	Lisa M. Willis
SIGNATORY'S POSITION	Attorney of record, NY bar member
SIGNATORY'S PHONE NUMBER	212-775-8700
DATE SIGNED	09/11/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Fri Sep 11 18:41:48 EDT 2015
TEAS STAMP	USPTO/RFR-12.1.41.226-201 50911184148301704-7914921 3-5401858692f225c9dc3ec34 c68353e1d9e13c6f048a1befe 593d827387d664559-N/A-N/A -20150911183152574408

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **79149213** TETRA (Stylized and/or with Design, see <http://tmng-al.uspto.gov/resting2/api/img/79149213/large>) has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Please see the actual argument text attached within the Evidence section.

EVIDENCE

Evidence in the nature of substantive argument and Exhibits A, B and C has been attached.

Original PDF file:

[evi_12141226-20150911183152574408_.TETRA-Response to Final Office Action.pdf](#)

Converted PDF file(s) (7 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

Original PDF file:

[evi_12141226-20150911183152574408_.TETRA-Exhibit A.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_12141226-20150911183152574408_.TETRA-Exhibit B.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_12141226-20150911183152574408_.TETRA-Exhibit C.pdf](#)

Converted PDF file(s) (5 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 001 for Fertilizers for aquatic plants for use in indoor aquaria, terraria and garden ponds; fertilizers for ornamental plants; water conditioners for use in indoor aquaria and garden ponds; chemical test kits for testing ammonia, nitrite, nitrate, pH alkalinity, hardness and/or calcium in water; water softeners and decalcifiers for use in indoor aquaria, terraria and garden ponds; bacteria and preparations containing bacteria for use in water treatment; test strips for testing water in indoor aquaria, garden ponds and terraria

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: Fertilizers for aquatic plants for use in indoor aquaria, terraria and garden ponds; fertilizers for ornamental plants; water conditioners for use in indoor aquaria and garden ponds; ~~chemical test kits for testing ammonia, nitrite, nitrate, pH alkalinity, hardness and/or calcium in water;~~ chemical test kits for testing ammonia, nitrite, nitrate, pH alkalinity, hardness and/or calcium in water for non-medical and non-veterinary use; water softeners and decalcifiers for use in indoor aquaria, terraria and garden ponds; ~~bacteria and preparations containing bacteria for use in water treatment;~~ bacteria and preparations containing bacteria for use in water treatment for non-medical and non-veterinary use; test strips for testing water in indoor aquaria, garden ponds and terraria

Class 001 for Fertilizers for aquatic plants for use in indoor aquaria, terraria and garden ponds; fertilizers for ornamental plants; water conditioners for use in indoor aquaria and garden ponds; chemical test kits for testing ammonia, nitrite, nitrate, pH alkalinity, hardness and/or calcium in water for non-medical and non-veterinary use; water softeners and decalcifiers for use in indoor aquaria, terraria and garden ponds; bacteria and preparations containing bacteria for use in water treatment for non-medical and non-veterinary use; test strips for testing water in indoor aquaria, garden ponds and terraria

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 007 for Electric membrane pumps for use in indoor aquaria; air pumps and water pumps for use in indoor aquaria, terraria and garden ponds; water aeration systems comprising water pumps and air compressors for use in indoor aquaria, terraria and garden ponds; draining apparatus (pumps) for use in garden ponds

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: Electric membrane pumps for use in indoor aquaria; ~~air pumps and water pumps for use in indoor aquaria, terraria and garden ponds;~~ electric air pumps and water pumps for use in indoor aquaria, terraria and garden ponds; water aeration systems comprising water pumps and air compressors for use in indoor aquaria, terraria and garden ponds; ~~draining apparatus (pumps) for use in garden ponds;~~ draining apparatus, namely, electric pumps for use in garden ponds

Class 007 for Electric membrane pumps for use in indoor aquaria; electric air pumps and water pumps for use in indoor aquaria, terraria and garden ponds; water aeration systems comprising water pumps and air compressors for use in indoor aquaria, terraria and garden ponds; draining apparatus, namely, electric pumps for use in garden ponds

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 011 for Lighting, heating and aerating apparatus; automatic temperature regulators; air filters, water filters all aforementioned goods to be used in indoor aquaria, terraria and garden ponds; heating apparatus with integrated thermostats for use in indoor aquaria and terraria; electrical filters and systems composed thereof for use in indoor aquaria, terraria and garden ponds; UV light bulbs for use in indoor aquaria, terraria and garden ponds; string lights for use in garden ponds; water filter and systems

composed thereof for use in indoor aquaria, garden ponds and terraria; fountain filtration sets; filter pads for use in filters in indoor aquaria, terraria and garden ponds; artificial waterfalls and fountains

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Lighting, heating and aerating apparatus;~~ Lighting, heating and aerating apparatus to be used in indoor aquaria, terraria and garden ponds, namely, aquarium lights, terrarium lights and lights to be used in garden ponds, water heaters to be used in indoor aquaria, terraria and garden ponds, electric heaters to be used in terraria, water treatment units for aerating and circulating water in indoor aquaria, terraria and garden ponds; ~~automatic temperature regulators;~~ automatic temperature regulators to be used in indoor aquaria, terraria and garden ponds; ~~air filters, water filters all aforementioned goods to be used in indoor aquaria, terraria and garden ponds;~~ air filters, water filters to be used in indoor aquaria, terraria and garden ponds; ~~heating apparatus with integrated thermostats for use in indoor aquaria and terraria;~~ heating apparatus with integrated thermostats for use in indoor aquaria and terraria, namely, water heaters and thermostats to be used in indoor aquaria, terraria and garden ponds, electric heaters to be used in terraria; ~~electrical filters and systems composed thereof for use in indoor aquaria, terraria and garden ponds;~~ electrical water filters and systems composed thereof and of filters, filter cartridges, filter pads and water pumps for use in indoor aquaria, terraria and garden ponds; UV light bulbs for use in indoor aquaria, terraria and garden ponds; string lights for use in garden ponds; ~~water filter and systems composed thereof for use in indoor aquaria, garden ponds and terraria;~~ water filter and systems composed thereof and of filters, filter cartridges, filter pads and water pumps for use in indoor aquaria, garden ponds and terraria; ~~fountain filtration sets;~~ fountain filtration sets comprised of filters, filter cartridges, water pumps and fountains; ~~filter pads for use in filters in indoor aquaria, terraria and garden ponds;~~ filter pads in the nature of replacement pads for water filters for use in water filters in indoor aquaria, terraria and garden ponds; artificial waterfalls and fountains

Class 011 for Lighting, heating and aerating apparatus to be used in indoor aquaria, terraria and garden ponds, namely, aquarium lights, terrarium lights and lights to be used in garden ponds, water heaters to be used in indoor aquaria, terraria and garden ponds, electric heaters to be used in terraria, water treatment units for aerating and circulating water in indoor aquaria, terraria and garden ponds; automatic temperature regulators to be used in indoor aquaria, terraria and garden ponds; air filters, water filters to be used in indoor aquaria, terraria and garden ponds; heating apparatus with integrated thermostats for use in indoor aquaria and terraria, namely, water heaters and thermostats to be used in indoor aquaria, terraria and garden ponds, electric heaters to be used in terraria; electrical water filters and systems composed thereof and of filters, filter cartridges, filter pads and water pumps for use in indoor aquaria, terraria and garden ponds; UV light bulbs for use in indoor aquaria, terraria and garden ponds; string lights for use in garden ponds; water filter and systems composed thereof and of filters, filter cartridges, filter pads and water pumps for use in indoor aquaria, garden ponds and terraria; fountain filtration sets comprised of filters, filter cartridges, water pumps and fountains; filter pads in the nature of replacement pads for water filters for use in water filters in indoor aquaria, terraria and garden ponds; artificial waterfalls and fountains

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 021 for Planting baskets for use in garden ponds; decoration material for use in indoor

aquaria, terraria and garden ponds; indoor aquarium bowls; aquaria and tanks for fish keeping; artificial reefs to be used as decorative material in indoor aquaria

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: Planting baskets for use in garden ponds; ~~decoration material for use in indoor aquaria, terraria and garden ponds;~~ decoration material, namely, artificial landscapes, artificial plants and flowers, water lilies, ornaments, for use in indoor aquaria, terraria and garden ponds; decoration material, namely, basking platforms for use in terraria; indoor aquarium bowls; aquaria and tanks for fish keeping; artificial reefs to be used as decorative material in indoor aquaria

Class 021 for Planting baskets for use in garden ponds; decoration material, namely, artificial landscapes, artificial plants and flowers, water lilies, ornaments, for use in indoor aquaria, terraria and garden ponds; decoration material, namely, basking platforms for use in terraria; indoor aquarium bowls; aquaria and tanks for fish keeping; artificial reefs to be used as decorative material in indoor aquaria

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

ATTORNEY ADDRESS

Applicant proposes to amend the following:

Proposed:

William H. Brewster of Kilpatrick Townsend & Stockton LLP, having an address of
1100 Peachtree Street, Suite 2800 Atlanta, Georgia 30309-4528

United States

tmadmin@kilpatricktownsend.com

404-815-6500

404-815-6555

The attorney docket/reference number is 056476.0957518 .

The Other Appointed Attorney(s): Michael W. Rafter, Jaclyn T. Shanks, Dana Breitman, Lisa M. Willis and other attorneys of the law firm.

CORRESPONDENCE ADDRESS CHANGE

Applicant proposes to amend the following:

Current:

Friedrich Graf von Westphalen

& Partner

Kaiser-Joseph-Straße 284

79098 Freiburg

DE

Proposed:

William H. Brewster of Kilpatrick Townsend & Stockton LLP, having an address of
1100 Peachtree Street, Suite 2800 Atlanta, Georgia 30309-4528

United States

tmadmin@kilpatricktownsend.com;mrafter@kilpatricktownsend.com; jshanks@kilpatricktownsend.com;
dbreitman@kilpatricktownsend.com; lwillis@kilpatricktownsend.com

404-815-6500

404-815-6555

The docket/reference number is 056476.0957518 .

ADDITIONAL STATEMENTS

SECTION 2(f) Claim of Acquired Distinctiveness, IN PART, based on Active Prior Registration(s)

TETRA has become distinctive of the goods/services as evidenced by the ownership on the Principal Register for the same mark for sufficiently similar goods/services of active U.S. Registration No(s). 1538717, 3098398, 3127194 and 4065205

SECTION 2(f) Claim of Acquired Distinctiveness, IN PART, based on Five or More Years' Use

T has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use of the mark in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Lisa M. Willis/ Date: 09/11/2015

Signatory's Name: Lisa M. Willis

Signatory's Position: Attorney of record, NY bar member

Signatory's Phone Number: 212-775-8700

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Mailing Address: William H. Brewster
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4528

Serial Number: 79149213

Internet Transmission Date: Fri Sep 11 18:41:48 EDT 2015

TEAS Stamp: USPTO/RFR-12.1.41.226-201509111841483017

04-79149213-5401858692f225c9dc3ec34c6835

3e1d9e13c6f048a1befe593d827387d664559-N/

A-N/A-20150911183152574408

I. WITHDRAWAL OF DISCLAIMER OF TETRA/PARTIAL 2(F) CLAIM

On August 6, 2014, the Examining Attorney requested a disclaimer of TETRA on the ground that the term is merely descriptive. On January 23, 2015, Applicant entered a disclaimer of TETRA. In this response, Applicant hereby withdraws the disclaimer of TETRA, and submits that TETRA has acquired distinctiveness under Section 2(f) based on: (1) Applicant's substantially exclusive and continuous use of the mark for at least five years and (2) Applicant's U.S. Reg. Nos. 1538717, 3098398, 3127194 and 4065205. Applicant has submitted the partial Section 2(f) claim using the electronic form.

II. AMENDMENT TO THE IDENTIFICATION OF GOODS

The Examining Attorney requests amendments to Applicant's goods in Classes 1, 7, 11 and 21. In response, Applicant amends the identification of goods as underlined below.

Cl. 1: Fertilizers for aquatic plants for use in indoor aquaria, terraria and garden ponds; fertilizers for ornamental plants; water conditioners for use in indoor aquaria and garden ponds; chemical test kits for testing ammonia, nitrite, nitrate, pH alkalinity, hardness and/or calcium in water for non-medical and non-veterinary use; water softeners and decalcifiers for use in indoor aquaria, terraria and garden ponds; bacteria and preparations containing bacteria for use in water treatment for non-medical and non-veterinary use; test strips for testing water in indoor aquaria, garden ponds and terraria

Cl. 7: Electric membrane pumps for use in indoor aquaria; electric air pumps and water pumps for use in indoor aquaria, terraria and garden ponds; water aeration systems comprising water pumps and air compressors for use in indoor aquaria, terraria and garden ponds; draining apparatus, namely, electric pumps for use in garden ponds.

Cl. 11: Lighting, heating and aerating apparatus to be used in indoor aquaria, terraria and garden ponds, namely, aquarium lights, terrarium lights and lights to be used in garden ponds, water heaters to be used in indoor aquaria, terraria and garden ponds, electric heaters to be used in terraria, water treatment units for aerating and circulating water in indoor aquaria, terraria and garden ponds; automatic temperature regulators to be used in indoor aquaria, terraria and garden ponds; air filters, water filters to be used in indoor aquaria, terraria and garden ponds; heating apparatus with integrated thermostats for use in indoor aquaria and terraria, namely, water heaters and thermostats to be used in indoor aquaria, terraria and garden ponds, electric heaters to be used in terraria; electrical water filters and systems composed thereof and of filters, filter cartridges, filter pads and water pumps for use in indoor aquaria, terraria and garden ponds; UV light bulbs for use in

indoor aquaria, terraria and garden ponds; string lights for use in garden ponds; water filter and systems composed thereof and of filters, filter cartridges, filter pads and water pumps for use in indoor aquaria, garden ponds and terraria; fountain filtration sets comprised of filters, filter cartridges, water pumps and fountains; filter pads in the nature of replacement pads for water filters for use in water filters in indoor aquaria, terraria and garden ponds; artificial waterfalls and fountains.

Cl. 21: Planting baskets for use in garden ponds; decoration material, namely, artificial landscapes, artificial plants and flowers, water lilies, ornaments, for use in indoor aquaria, terraria and garden ponds; decoration material, namely, basking platforms for use in terraria; indoor aquarium bowls; aquaria and tanks for fish keeping; artificial reefs to be used as decorative material in indoor aquaria

The above amendments have been entered using the electronic form.

III. LIKELIHOOD OF CONFUSION

The Examining Attorney issued a Final Office Action refusing registration of Applicant's Mark based on a likelihood of confusion with U.S. Registration Nos. 2659347, 2771093, 3088310, 3629692, 4036994, and 4192392 (the "Cited Registrations"). For the reasons discuss below, Applicant respectfully requests that the refusal based on the Cited Registrations be withdrawn.

A. Refusal Based On Registrations Owned By Tetra Laval Holdings & Finance S.A. And GE Lighting Solutions, LLC

Applicant has entered into consent agreements ("Consent Agreements") with respect to the Applicant's use and registration of Applicant's Mark with owners of four of the Cited Registrations, namely, Tetra Laval Holdings & Finance S.A., which owns Reg. Nos. 2659347, 4036994 and 4192392, and GE Lighting Solutions, LLC, which owns Reg. No. 3088310. See Exhibits A and B, which contain copies of the aforementioned Consent Agreements.

The Consent Agreements are evidence that the parties, based on their experience in the marketplace, believe that there will be no likelihood of confusion because of the differences in

the parties' marks and the restrictions each party has agreed to with respect to the use and/or registration of those marks. Such agreements have been accorded great weight by the Federal Circuit and TTAB because the parties are in the best position to determine whether or not there is a likelihood of confusion. *See, e.g., In re Four Seasons Hotels Ltd.*, 26 U.S.P.Q.2d 1071, 1073 (Fed. Cir 1993):

The parties themselves have determined that confusion of the public by concurrent use of their marks is unlikely. . . . There is no reason to ignore their assessment of likelihood of confusion and not give substantial weight to their agreement as evidence that likelihood of confusion does not exist. . . . It is well settled that in the absence of contrary evidence, a consent agreement itself may evidence that there is no likelihood of confusion.

Id. at 1073. *See also Bongrain Int'l (Am.) v. Delice de France, Inc.*, 811 F.2d 1479, 1484-85 (Fed. Cir. 1987) (no likelihood of confusion between DELICE DE FRANCE, INC. and LE PETIT DELICE DE FRANCE where the owners of the marks entered into a consent agreement, since the parties "are in a much better position to know the real life situation than bureaucrats or judges and therefore [consent] agreements may . . . carry great weight"); *In re N.A.D. Inc.*, 224 U.S.P.Q. 969, 970 (Fed. Cir. 1985) ("We think it highly unlikely that [the parties to the agreement] would have deliberately created a situation in which the sources of their respective products would be confused by their customers.") Because the Consent Agreements are credible agreements between the parties most interested in avoiding any confusion between the respective marks, the Section 2(d) refusal based on the Cited Registrations should be withdrawn.

B. Refusal Based on Tetra Technologies Registrations

Regarding the registrations owned by Tetra Technologies, Inc., namely, Reg. Nos. 2771093 and 3629692, Applicant is currently negotiating a consent agreement with Tetra Technologies. However, Applicant submits that there is no likelihood of confusion between the

parties' marks given the significant differences between the parties' respective goods and services.

Tetra Technologies' registrations cover the following goods and services:

Mark/Reg. No.	Goods/Services
TETRA 2771093	<p>Cl. 1: Chemicals used in oil and gas production and operation services, namely, drill-in fluids, completion fluids, and well fraction fluids; chemical additives and fluids used in oil field servicing industry, chemicals used as deicers; chemicals used in agriculture namely for soil amendment and plant nutrients; chemicals used in dust suppression in the agriculture mining industry as well as the maintenance of roadways and unpaved surfaces industry; chemicals used in food processing namely nutrient preservatives; chemicals used in processing in the oil and gas and specialty chemicals industries; chemicals used in the biotechnology industry, namely dehumidifiers; dehumidifying preparations for industrial use</p> <p>Cl. 3: Mildew treatments</p> <p>Cl. 37: Oil and gas well drilling</p> <p>Cl. 40: Oil and gas well treatment service, namely plugging oil and gas wells and preparation for abandoning and decommissioning oil and gas wells and salt water disposal wells; treatment of petrochemical waste products; treatment of fluids used in oil and gas field operations</p> <p>Cl. 42: Analysis and testing services for oil workings, namely analysis and testing services provided to oil and gas production and operation industries; providing an online computer database featuring analysis and testing results for oil workings</p>
TETRA CHEMICALS 3629692	<p>Cl. 1: Chemical products, namely, halides, for use in dust control, fluoride removal, food processing, gas drying, ice and snow melting, mining, accelerator for concrete and admixture setting, road base stabilization, and tire weighting; Chemical products, namely, calcium, nitrogen, and chloride supplements for use as plant and animal nutrients; Chemical products, namely, halides, for use in oil and gas drilling and downhole applications, petrochemical applications, water treatment applications and industrial applications; Chemical products, namely, halides for use as viscosifying agents in the manufacture of pharmaceutical compositions, creams, lotions, and plant and animal nutrients</p> <p>Cl. 5: Chemical products, namely, halides, for use as disinfectants, sanitizers, slimicides, bactericides, fungicides, molluscicides, and algacides excluding algacides for use in aquaria and garden ponds</p>

The Examining Attorney contends that Applicant and Tetra Technologies' goods are sufficiently related "because applicant provides plant fertilizers and the registrants (sic) provide

plant nutrients.” The Examining Attorney further argues that the parties’ goods “would be used for the same purpose, namely, to advance and support the growth of plants, and would thus be sold through the same channels of trade and to the same consumers.”

Applicant respectfully disagrees that the parties’ goods are sufficiently related. When the goods at issue are highly technical, as is the case with the goods and services identified in the Tetra Technologies registrations, extrinsic evidence is permitted to show the nature of the goods and services. See, e.g., In re Power Distribution, Inc., Serial No. 77825939 (September 29, 2012) (“In instances involving...technical goods, it is entirely appropriate for the Board to consider extrinsic evidence in order to ascertain the significance of the goods.”); In re Edwards Life Sciences, 94 USPQ2d 1399 (TTAB 2010) (where the “description of goods provides basic information, and the goods are of a technical nature, it is entirely appropriate to consider extrinsic evidence to determine the specific meaning of the description of goods.”). Tetra Technologies “is a geographically diversified oil and gas services company, focused on completion fluids and associated products and services, water management, frac flowback, production well testing, offshore rig cooling, compression services and equipment, and selected offshore services including well plugging and abandonment, decommissioning, and diving.” *See* Exhibit C, which contains a printout from Tetra Technologies’ website. Applicant’s Mark, by contrast, is used in connection with consumer-oriented aquarium, terrarium and garden pond products, such as filters, pumps and decorations for aquariums and terrariums and planting baskets for garden ponds. Further, the Class 5 goods in Tetra Technologies’ Reg. No. 3629692 *expressly* exclude certain goods for aquaria and garden ponds, as it covers “chemical products, namely, halides, for use as disinfectants, sanitizers, slimicides, bactericides, fungicides,

molluscicides, and algaecides *excluding algaecides for use in aquaria and garden ponds.*”

(Emphasis added). It is evident that the parties’ goods are not sufficiently related.

In addition, Tetra Technologies’ registrations do not cover “plant nutrients” as the Examining Attorney maintains, rather they cover *chemicals*, specifically, “chemicals used in agriculture namely for soil amendment and plant nutrients.” The Examining Attorney has not shown that these chemicals are sold to ordinary consumers, as are Applicant’s plant fertilizers that are used in aquarium, terrarium and garden ponds. As such, the Examining Attorney has not shown that Applicant’s plant fertilizers are related to Tetra Technologies chemicals or that the parties’ goods would be sold to the same channels of trade and to the same class of purchasers.

The Examining Attorney also maintains that the parties’ goods are sufficiently related because Applicant’s goods and the goods identified in Tetra Technologies’ Reg. No. 3629692 both cover “preparations used in water treatment.” Applicant submits that even if the parties’ goods both covered water treatment preparations, that alone is insufficient to establish the relatedness of the parties’ goods. The mere fact that parties’ goods fit under the same broad umbrella or are sold in the same general field does not mean they are sufficiently related for Section 2(d) purposes. See, e.g., In re The W.W. Henry Co., L.P., 82 USPQ2d 1213 (TTAB 2007) (“[I]t is not sufficient that a particular term may be found which may broadly describe the goods.”); Edwards Lifesciences Corporation v. VigiLanz Corporation, 94 USPQ2d 1399 (TTAB 2010) (VIGILANZ and VIGILANCE not confusingly similar although both marks were used in connection with patient monitoring devices in hospital settings. The Board stated that the relatedness of the goods inquiry “is not based on whether a general term or overarching relationship can be found to encompass them both.”); In re TriVascular, Inc., Serial No. 77941535 (TTAB November 27, 2012) (no likelihood of confusion between OVATION for

vascular implants and OVATION for hip implants although both marks cover prosthetics). Here, the parties' goods are readily distinguishable. While Applicant sells water treatment preparations that are used in home aquariums, terrariums and garden ponds, Tetra Technologies' goods cover industrial products, namely, "chemical products, namely, halides, for use in oil and gas drilling and downhole applications, petrochemical applications, water treatment applications and industrial applications." The parties' respective goods are far afield.

As the TMEP instructs, the Examining Attorney "must provide evidence showing that the goods and services are related to support a finding of likelihood of confusion." TMEP § 1207.01(a)(vi). Applicant respectfully submits that the Examining Attorney has not met her burden in establishing the relatedness of the parties' goods. Given the significant differences between the parties' respective goods, the Section 2(d) refusal should be withdrawn.

EXHIBIT A

LETTER OF CONSENT

We, the undersigned, Anna-Lena Wolfe and Susan Storor, on behalf of TETRA LAVAL HOLDINGS & FINANCE S.A., 70, avenue Général-Guisan, 1009 Pully, SWITZERLAND, do hereby declare as proprietor of US trademark registrations Nos.

2659347 „Tetra Spiralflo“,
4036994 „Tetra Vertenso“ and
4192392 „Tetra Vichtenso“.

that we have no objections to Tetra GmbH, Herrenteich 78, 49324 Melle, Germany, registering and using their trademark "Tetra (Waterflea device)" in the US as applied for under international registration No. 1208960 (US application serial No. 79149213) in respect to the following goods applied for, namely:

- Class 1:** Fertilizers for aquatic plants for use in indoor aquaria, terraria and garden ponds; fertilizers for ornamental plants; water conditioners for use in indoor aquaria and garden ponds; chemical test kits for testing ammonia, nitrite, nitrate, pH alkalinity, hardness and/or calcium in water; water softeners and decalcifiers for use in indoor aquaria, terraria and garden ponds; bacteria and preparations containing bacteria for use in water treatment; test strips for testing water in indoor aquaria, garden ponds and terraria.
- Class 7:** Electric membrane pumps for use in indoor aquaria; air pumps and water pumps for use in indoor aquaria, terraria and garden ponds; water aeration systems comprising water pumps and air compressors for use in indoor aquaria, terraria and garden ponds; draining apparatus (pumps) for use in garden ponds.
- Class 9:** Electrical timers for filters used in indoor aquaria, terraria and garden ponds.
- Class 11:** Lighting, heating and aerating apparatus to be used in indoor aquaria, terraria and garden ponds; automatic temperature regulators to be used in indoor aquaria, terraria and garden ponds; air filters, water filters all aforementioned goods to be used in indoor aquaria, terraria and garden ponds; heating



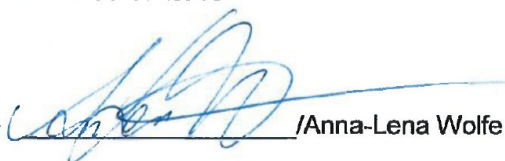
apparatus with integrated thermostats for use in indoor aquaria and terraria; electrical filters and systems composed thereof for use in indoor aquaria, terraria and garden ponds; UV light bulbs for use in indoor aquaria, terraria and garden ponds; string lights for use in garden ponds; water filter and systems composed thereof for use in indoor aquaria, garden ponds and terraria; fountain filtration sets; filter pads for use in filters in indoor aquaria, terraria and garden ponds; artificial waterfalls and fountains.

Class 17: Foam sealant for use in garden ponds and pond liners.

Class 21: Planting baskets for use in garden ponds; decoration material for use in indoor aquaria, terraria and garden ponds; indoor aquarium bowls; aquaria and tanks for fish keeping; artificial reefs to be used as decorative material in indoor aquaria.

Class 22: Fish nets for use in indoor aquaria and garden ponds.

Date: 30-07-2015


/Anna-Lena Wolfe


/Susan Storer

EXHIBIT B



Sean Merrill

General Electric Company
3135 Easton Turnpike
Fairfield, CT 06828
USA

T 203 373 3328
F 203 373 2181
sean.merrill@ge.com

July 23, 2015

To Whom It May Concern:

We, the undersigned, GE Lighting Solutions, LLC - Corporation Delaware - 1975 Noble Park, Cleveland, Ohio 4411-26300, USA do hereby declare as proprietor of US trademark registration No. 3088310 "Tetra".

that we have no objections to Tetra GmbH, Herrenteich 78, 49324 Melle, Germany, registering and using their trademark "Tetra (Waterflea device)" in the US as applied for under international registration No. 1208960 (US application serial No. 79149213) in respect to the following goods applied for, namely:

- Class 1: Fertilizers for aquatic plants for use in indoor aquaria, terraria and garden ponds; fertilizers for ornamental plants; water conditioners for use in indoor aquaria and garden ponds; chemical test kits for testing ammonia, nitrite, nitrate, pH alkalinity, hardness and/or calcium in water; water softeners and decalcifiers for use in indoor aquaria, terraria and garden ponds; bacteria and preparations containing bacteria for use in water treatment; test strips for testing water in indoor aquaria, garden ponds and terraria.
- Class 7: Electric membrane pumps for use in indoor aquaria; air pumps and water pumps for use in indoor aquaria, terraria and garden ponds; water aeration systems comprising water pumps and air compressors for use in indoor aquaria, terraria and garden ponds; draining apparatus (pumps) for use in garden ponds.
- Class 9: Electrical timers for filters used in indoor aquaria, terraria and garden ponds.
- Class 11: Lighting, heating and aerating apparatus; automatic temperature regulators; air filters, water filters all aforementioned goods to be used in indoor aquaria, terraria and garden ponds; heating apparatus with integrated thermostats for use in indoor aquaria and terraria; electrical filters and systems composed thereof for use in indoor aquaria, terraria and garden ponds; UV light bulbs for use in indoor aquaria, terraria and garden ponds; string lights for use in garden ponds; water filter and systems composed thereof for use in indoor aquaria, garden ponds and terraria; fountain filtration sets; filter pads

for use in filters in indoor aquaria, terraria and garden ponds; artificial waterfalls and fountains.

Class 17: Foam sealant for use in garden ponds and pond liners.

Class 21: Planting baskets for use in garden ponds; decoration material for use in indoor aquaria, terraria and garden ponds; indoor aquarium bowls; aquaria and tanks for fish keeping; artificial reefs to be used as decorative material in indoor aquaria.

Class 22: Fish nets for use in indoor aquaria and garden ponds.

Sincerely,

A handwritten signature in blue ink, appearing to read "S.P. Merrill", is written over the typed name.

Sean P. Merrill
Authorized Attorney
GE Lighting Solutions, LLC

EXHIBIT C



About TETRA

TETRA Technologies, Inc. is a geographically diversified oil and gas services company, focused on completion fluids and associated products and services, water management, frac flowback, production well testing, offshore rig cooling, compression services and equipment, and selected offshore services including well plugging and abandonment, decommissioning, and diving.

Headquartered in The Woodlands, Texas, TETRA® is a global company with employees and operations on six continents. We were incorporated in Delaware on February 6, 1981 and trade on the New York Stock Exchange (NYSE) under the ticker symbol TTI. Compressco Partners, L.P. (CSI Compressco or the Partnership) announced that it has changed its name to CSI Compressco LP, effective December 1, 2014, following the closing of its acquisition of Compressor Systems, Inc. (CSI) in August 2014. In addition to the name change, and also effective December 1, 2014, the NASDAQ ticker symbol for CSI Compressco LP's common units has been changed from "GSJK" to "CCLP".



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"...we are realizing the benefits of multi-year efforts focused on developing new technologies, honing our market advantages, and enhancing our ability to respond to our customers' needs."

Stu Brightman, President and CEO

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Careers

About TETRA

Established in 1981, TETRA has successfully capitalized on the industry's boom times and moderated the inevitable downswings by concentrating on niche markets and by establishing long-term contracts with its customers. It has continually expanded and diversified its business to meet the needs of its customer base, building on a well-positioned platform for growth.

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